

## **Chapter 5.16 - CABLE TELEVISION SYSTEM**

### **Sections:**

- [5.16.010 - Intent.](#)
- [5.16.020 - Definitions.](#)
- [5.16.030 - Franchise to install and operate.](#)
- [5.16.040 - Franchise required.](#)
- [5.16.050 - Franchise—Term.](#)
- [5.16.060 - Franchise territory.](#)
- [5.16.070 - Federal or state jurisdiction.](#)
- [5.16.080 - Franchise nontransferable.](#)
- [5.16.090 - Geographical coverage.](#)
- [5.16.100 - Nonexclusive franchise.](#)
- [5.16.110 - Multiple franchises.](#)
- [5.16.120 - Franchise applications.](#)
- [5.16.130 - Applications—Contents.](#)
- [5.16.140 - Consideration of applications.](#)
- [5.16.150 - Franchise renewal.](#)
- [5.16.160 - Minimum consumer protection and service standards.](#)
- [5.16.170 - Additional service standards.](#)
- [5.16.180 - Franchise fee.](#)
- [5.16.190 - Design and construction requirements.](#)
- [5.16.200 - Service connections.](#)
- [5.16.210 - Line extensions.](#)
- [5.16.220 - Technical standards.](#)
- [5.16.230 - Service to public facilities.](#)
- [5.16.240 - Hold harmless.](#)
- [5.16.250 - Insurance.](#)
- [5.16.260 - Performance bond.](#)
- [5.16.270 - Records required—Grantor's right to inspect.](#)
- [5.16.280 - Annual reports.](#)
- [5.16.290 - Copies of federal and state communications.](#)
- [5.16.300 - Public reports.](#)
- [5.16.310 - Complaint report and opinion survey.](#)
- [5.16.320 - Privacy report.](#)
- [5.16.330 - Reports—General.](#)

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

[5.16.340 - Review of system performance.](#)

[5.16.350 - Special review of system performance.](#)

[5.16.360 - Remedies for franchise violations.](#)

[5.16.370 - Grantor's power to revoke.](#)

[5.16.380 - Procedure for remedying franchise violations.](#)

[5.16.390 - Force majeure—Grantee's inability to perform.](#)

[5.16.400 - Abandonment or removal of franchise property.](#)

[5.16.410 - Restoration by grantor—Reimbursement of costs.](#)

[5.16.420 - Extended operation and continuation of services.](#)

[5.16.430 - Receivership and foreclosure.](#)

[5.16.440 - Rights reserved to grantor.](#)

[5.16.450 - Rights of individuals.](#)

#### **5.16.010 - Intent.**

- A. The city, pursuant to Government Code Section 53066, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable television systems within the city limits.
- B. The city council finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the residents of Colfax. Because of the complex and rapidly changing technology associated with cable television, the city council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any franchises issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

(Ord. 439 § 2 (1.1), 1996)

#### **5.16.020 - Definitions.**

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. Words used in the present tense include in the future, words in the plural number include the singular number and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

"Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

"Cable television system" or "system," also referred to as "cable communications system" or "cable system," means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service, which includes video programming, FM radio service and other communications services and which is provided to multiple subscribers within a community, but such term does not include:

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves subscribers without using any public right-of-way;
3. A facility of a common carrier which is subject to Title I of the Telecommunications Act of 1996, as amended, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) [47 U.S.C. 541 (b)]) to the extent such a facility is used in the transmission of video programming directly to subscribers; or
4. Any facilities of any electric utility used solely for operating its electric utility system.

"Cable service" means the total of the following:

1. The one-way transmission to subscribers of video programming or other programming service; and
2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Channel" or "cable channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission by regulation.

"Council" means the city council of the city of Colfax.

"Franchise" means an initial authorization or renewal thereof, issued by the city council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable system.

"Franchise agreement" means a franchise grant ordinance or a contractual agreement, containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

"Franchise fee" means any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on a grantee or cable subscriber or both, solely because of their status as such. The term "franchise fee" does not include:

1. Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services), but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers;
2. Capital costs which are required by the franchise to be incurred by grantee for public, educational or governmental access facilities;
3. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
4. Any fee imposed under [Title 17](#), United States Code.

"Grantee" means any person receiving a franchise pursuant to this chapter and under the granting franchise ordinance or agreement and its lawful successor, transferee or assignee.

"Grantor" or "city" means the city of Colfax as represented by the council or any delegate acting within the scope of its jurisdiction.

"Gross annual receipts" means the annual gross receipts received by a grantee during the calendar year from all sources of operations of the cable television system within the city utilizing the public streets and rights-of-way for which a franchise is required in order to deliver such cable service, excluding franchise fees, copyright fees, refundable deposits, amounts paid by subscribers into an escrow account, rebates or credits and any sales, excise or other taxes or charges collected for direct payment or pass-through to local, state or federal government.

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

"Initial service area" means the area of the city which will receive service initially, as set forth in the franchise agreement.

"Installation" means the connection of the system to subscribers' terminals and the provision of service.

"Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

"Public, educational or government access facilities" or "PEG access facilities" means the total of the following:

1. Channel capacity designated for public, educational or governmental use; and
2. Facilities and equipment or the use of such channel capacity.

"Section" means any section, subsection or provision of this chapter.

"Service area" or "franchise area" means an entire geographic area within the city as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise granting ordinance or agreement.

"Service tier" means a category of cable service or other services provided by a grantee and for which a separate rate is charged by the grantee.

"State" means the state of California.

"Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the city limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the grantor shall permit to be included within the definition of street from time to time.

"Subscriber" means any person who or which elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connections with cable system.

(Ord. 439 § 2 (1.2), 1996)

#### **5.16.030 - Franchise to install and operate.**

A franchise granted by the city under the provisions of this chapter shall encompass the following purposes:

- A. To provide that grantee may engage in the business of providing cable television service and such other services as may be permitted by law, to subscribers within the designated service area.
- B. To provide that grantee may erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cable, lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a cable system in, on, over, under, upon, along and across streets or other public places within the designated service area.
- C. To provide that grantee may maintain and operate the franchise properties for the origination, reception, transmission, amplification and distribution of television and radio signals and for the delivery of cable services.
- D. To set forth the obligations of a grantee under the franchise.

(Ord. 439 § 2 (1.3), 1996)

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

#### **5.16.040 - Franchise required.**

It is unlawful for any person to construct, install or operate a cable television system in the city without a properly granted franchise awarded pursuant to the provisions of this chapter.

(Ord. 439 § 2 (1.4), 1996)

#### **5.16.050 - Franchise—Term.**

- A. A franchise granted hereunder shall be for a term established in the franchise agreement, commencing on the grantor's adoption of an ordinance or resolution authorizing the franchise. The first day of the term shall from time to time be referred to as the "effective date" of the franchise.
- B. A franchise granted hereunder may be renewed upon application by the grantee pursuant to the provisions of applicable state and federal law and of this chapter.

(Ord. 439 § 2 (1.5), 1996)

#### **5.16.060 - Franchise territory.**

Any franchise shall be valid within all the territorial limits of the city and within any area added to the city during the term of the franchise, unless otherwise specified in the franchise granting ordinance or agreement.

(Ord. 439 § 2 (1.6), 1996)

#### **5.16.070 - Federal or state jurisdiction.**

- A. This chapter shall be construed in a manner consistent with all applicable federal and state laws. Whenever any state or federal law has paramount jurisdiction over any specific provisions of this chapter or when such paramount jurisdiction is exercised by an individual with standing, the Federal Communications Commission (FCC) or Public Utilities Commission (PUC) of the state of California or any other federal or state agency, such paramount jurisdiction shall preempt or preclude the exercise of like jurisdiction by the city. Any modification of such federal or state law shall to the extent applicable be considered part of this chapter as of the effective date of such modification.
- B. In the event that the state or federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal authority, grantor may, if it so elects, adopt rules and regulations in these areas, provided that such rules and regulations shall not apply to any franchise issued pursuant to this chapter prior to the adoption of such rules and regulations to the extent they materially adversely affect such franchise, including, without limitation, requirements with respect to system rebuilds, channel capacity, system design, construction and performance requirements, public, educational or governmental access facilities, support for any such facilities, interconnect commitments, activation of interactive capability or institutional networks. Such new municipal regulatory powers may, however, affect existing franchises with respect to franchise renewal procedures, technical standards and related provisions.
- C. This chapter shall apply to all franchises granted or renewed after the effective date of this chapter. It shall further apply to the extent permitted by applicable federal or state law to all existing franchises granted prior to the effective date of this chapter.

(Ord. 439 § 2 (1.7), 1996)

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

#### **5.16.080 - Franchise nontransferable.**

- A. Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the council and then only upon such terms and conditions as may be prescribed by the council, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the council shall be null and void. The granting of a security interest in any grantee assets or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this section.
- B. The requirements of subsection A of this section shall apply to any change in the control of grantee. The word "control" as used herein is not limited to major stockholders or partnership interests, but includes actual working control in whatever manner exercised. In the event that grantee is a corporation, prior approval of the council shall be required where ownership or control of more than ten (10) percent of the voting stock of grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of grantee as of the effective date of the franchise, singularly or collectively.
- C. Grantee shall notify grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the grantee or upon the termination of any lease or interest covering all or a substantial part of the franchise property. Such notifications shall be considered by grantor as notice that a change in control of ownership of the franchise has taken place and the provisions under this section governing the consent of grantor to such change in control ownership shall apply.
- D. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, grantor may inquire into the qualifications of the prospective transferee or controlling party and grantee shall assist grantor in any such inquiry. In seeking grantor's consent to any change of ownership or control, grantee shall have the responsibility of insuring that the transferee completes an application in the form and substance reasonably satisfactory to grantor, which application shall include information required under [Section 5.16.130\(A\)](#) through (G) of this chapter. Grantor may also request such reasonable additional information that it deems applicable. An application shall be submitted to grantor not less than sixty (60) days prior to the date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the legal, financial, character, technical and other public interest qualities of the applicant and determining that they are satisfactory, the grantor finds that such transfer is acceptable, the grantor shall transfer and assign the rights and obligations of such franchise as may be in the public interest. The consent of the grantor to such transfer shall not be unreasonably withheld.
- E. Any financial institution having a pledge of the grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the grantor that it or its designee satisfactory to the grantor shall take control of and operate the cable television system, in the event of a grantee defaulting in its financial obligations. Further, the financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the grantor in its discretion and during the period of time it shall have the right to petition the grantor to transfer the franchise to another grantee.

(Ord. 439 § 2 (1.8), 1996)

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

#### **5.16.090 - Geographical coverage.**

- A. Grantee shall design, construct and maintain the cable television system to have the capability to pass every dwelling unit in the city, subject to any service area line extension requirements of the franchise documents.
- B. After service has been established by activating trunk and/or distribution cables for any service area, grantee shall provide service to any requesting subscriber within that service area within thirty (30) days from the request, provided that the grantee is able to secure all rights-of-way and encroachment permits necessary to extend service to such subscriber within such thirty (30) day period on reasonable terms and conditions mutually acceptable to grantee and such subscriber.

(Ord. 439 § 2 (1.9), 1996)

#### **5.16.100 - Nonexclusive franchise.**

Any franchise granted shall be nonexclusive. The grantor specifically reserves the right to grant, at any time, such additional franchises for a cable television system or any component thereof, as it deems appropriate, subject to applicable state and federal law.

(Ord. 439 § 2 (1.10), 1996)

#### **5.16.110 - Multiple franchises.**

- A. Grantor may grant any number of franchises in the service area. Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:
  - 1. The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage;
  - 2. The benefits that may accrue to cable subscribers as a result of cable system competition, such as lower rates and improved service;
  - 3. The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property and the disruption arising from numerous excavations of the rights-of-way.
- B. Each grantee awarded a franchise to serve the entire city shall offer service to all residences in the city, in accordance with construction and service schedules mutually agreed upon between grantor and grantee and consistent with applicable law.
- C. Grantor may require that any new grantee be responsible for its own undergrounding trenching and the costs associated therewith, if, in grantor's opinion, the rights-of-way in any particular area cannot feasibly accommodate additional cables.

(Ord. 439 § 2 (1.11), 1996)

#### **5.16.120 - Franchise applications.**

Any person desiring a franchise for a cable television system shall file an application with the city. A reasonable nonrefundable application fee established by the city shall accompany the application to cover all costs associated with processing and reviewing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements



## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the city within thirty (30) days following receipt of an itemized statement of such costs.

(Ord. 439 § 2 (1.12), 1996)

#### **5.16.130 - Applications—Contents.**

An application for a franchise for a cable television system shall contain, where applicable:

- A. A statement as to the proposed franchise and service area;
- B. Resumé of prior history of applicant, including the expertise of applicant in the cable television field;
- C. List of partners, general and limited, of the applicant, if a partnership or the percentage of stock owned or controlled by each shareholder, if a corporation;
- D. List of officers, directors and managing employees of applicant, together with a description of the background of each such person;
- E. The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by applicant;
- F. A current financial statement of applicant verified by a CPA audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the city;
- G. Proposed construction and service schedule; and
- H. Any reasonable additional information that the city deems applicable.

(Ord. 439 § 2 (1.13), 1996)

#### **5.16.140 - Consideration of applications.**

- A. Upon receipt of any application for a franchise, the city manager shall prepare a report and make his or her recommendations respecting such application to the city council.
- B. A public hearing shall be set prior to any franchise grant, at a time and date approved by the council. Within thirty (30) days after the close of the hearing, the council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted and if granted, subject to what conditions. The council may grant one or more franchises or may decline to grant any franchise.

(Ord. 439 § 2 (1.14), 1996)

#### **5.16.150 - Franchise renewal.**

Franchise renewals shall be in accordance with applicable law, including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. Grantor and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Grantee shall have no obligation to reimburse grantor for costs associated with processing and reviewing the application for renewal except as allowed by law. To the extent allowed by law, grantee may offset any reimbursement against its franchise fees liability and/or may pass-through the cost of the reimbursement to subscribers.

(Ord. 439 § 2 (1.15), 1996)



## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

#### **5.16.160 - Minimum consumer protection and service standards.**

- A. Except as otherwise provided in the franchise agreement, grantee shall maintain an office in close proximity to the city to provide the necessary facilities, equipment and personnel to comply with the following consumer protection and standards under normal conditions of operation:
1. Sufficient toll-free telephone line capacity during normal business hours to assure that a minimum of ninety-five (95) percent of all calls will be answered before the fourth ring;
  2. Emergency toll-free telephone capacity on a twenty-four (24) hour basis, including weekends and holidays;
  3. An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a twenty-four (24) hour per day basis;
  4. An installation staff, capable of installing service to any subscriber within seven days after receipt of request, in all areas where trunk and feeder cable have been activated;
  5. Grantee shall schedule, within a specified four-hour time period, all appointments with subscribers for installation or service.
- B. Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system, preferably between midnight and six a.m.
- C. Grantee shall maintain a written log or an equivalent stored in computer memory and capable of access and reproduction in printed form, for all service interruptions and requests for cable service that result in a service call.
- D. The grantee shall maintain a repair force of technicians generally capable of responding to subscriber requests for service within the following time frames:
1. For a system outage: within two hours, including weekends, of receiving subscriber calls or request for service which by number identify a system outage of sound or picture of one or more channels, affecting at least ten (10) percent of the subscribers of the system;
  2. For an isolated outage: within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one or more channels;
  3. For inferior signal quality: within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival. Three successive subscriber failures to be present at an appointed time shall excuse grantee of duty to respond.

No charge shall be made to the subscriber for any service call unless the service request can be demonstrated to be unrelated to the portions of the cable system owned by grantee or to involve subscriber negligence or damage to grantee's property by the subscriber.

- E. Unless excused, grantee shall determine the nature of the problem within forty-eight (48) hours of beginning work and resolve all cable system related problems within five business days unless technically unfeasible.
- F. Upon five days notice, grantee shall establish its compliance with any or all of the standards required above. Grantee shall provide sufficient documentation to permit grantor to verify the compliance.

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

- G. A repeated and verifiable pattern of material noncompliance with the consumer protection standards of subsections A through E of this section, after grantee's receipt of due notice and an opportunity to cure, may be deemed a material breach of the franchise agreement.
- H. Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without the intervention by the grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with grantor.
- I. Grantor may determine, upon review of a subscriber complaint and the grantee's decision, if any, whether further action is warranted.
- J. The grantor may establish an escrow account wherein a subscriber may deposit a disputed portion of the subscriber's monthly service charge. If a subscriber either continues to make full and timely payment of all monthly service charges to grantee or deposit any disputed portion of such monthly service charges into the escrow account, grantee shall not discontinue service during the pendency of complaint submitted under the provisions of this chapter. Any amount deposited in the escrow account shall be paid to the grantee or subscriber in accordance with a final determination of a complaint.
- K. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to rebuild, modify or sell the system or the grantor gives notice of intent to terminate or not to renew the franchise, the grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force.

In the event of a change of grantee or in the event a new operator acquires the system, the original grantee shall cooperate with the grantor, new grantee or operator in maintaining continuity of service to all subscribers. During such period, grantee shall be entitled to the revenues for any period during which it operates the system.

- L. In the event grantee fails to operate the system for seven consecutive days without prior approval or subsequent excusal of the grantor, the grantor may, at its option, operate the system or designate an operator until such time as grantee restores service under conditions acceptable to the grantor or a permanent operator is selected. If the grantor should fulfill this obligation for the grantee, then during such period as the grantor fulfills such obligation, the grantor shall be entitled to collect all revenues from the system and the grantee shall reimburse the grantor for all reasonable costs or damages in excess of the revenues collected by the grantor that are the result of the grantee's failure to perform.
- M. All officers, agents or employees of the grantee or its contractors or subcontractors who in the normal course of work require entry onto subscribers' premises shall carry a photo-identification card in a form approved by grantor. Grantor shall account for all identification cards at all times. Every vehicle of the grantee utilized for field maintenance shall be clearly identified as working for grantee. All such identification shall be returned on termination of service or permanently defaced on sale of vehicle.

(Ord. 439 § 2 (1.16), 1996)

#### **5.16.170 - Additional service standards.**

Additional service standards and standards governing consumer protection and response by grantee to subscriber complaints not otherwise provided for in this chapter may be established in the franchise agreement and the grantee shall comply with such standards in the operation of the cable television system. A verified and continuing pattern of material noncompliance may be deemed a material breach of the franchise.

(Ord. 439 § 2 (1.17), 1996)

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

#### **5.16.180 - Franchise fee.**

- A. Following the issuance and acceptance of the franchise, grantee shall pay to the grantor a franchise fee in the amount set forth in the franchise agreement.
- B. The grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, either audited and certified by an independent certified public accountant, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment. Upon ten (10) days prior written notice, grantor shall have the right to conduct an independent audit of grantee's records for the three-year period immediately preceding the notice, in accordance with generally accepted auditing standards and if such audit indicates a franchise fee underpayment of two percent or more, the grantee shall assume all reasonable costs of such an audit.
- C. No acceptance of any payment by the grantor shall be construed as a release or as an accord and satisfaction of any claim the grantor may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.
- D. In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement, grantee shall pay as additional compensation:
  - 1. An interest charge, computed from such due date, at an annual rate equal to the average rate of return on invested funds of the grantor during the period for which payment was due; and
  - 2. If the payment is late for forty-five (45) days or more, a sum of money equal to five percent of the amount due in order to defray those additional expenses and costs incurred by the grantor by reason of delinquent payment.
- E. Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

(Ord. 439 § 2 (1.18), 1996)

#### **5.16.190 - Design and construction requirements.**

- A. Grantee shall not construct any cable system facilities until grantee has secured necessary permits from grantor or other cognizant public agencies.
- B. In those areas of the city where transmission or distribution facilities of the public utilities providing telephone and electric power service or the facilities of cable service provider(s) are underground as of the effective date of the ordinance codified in this chapter, the grantee likewise shall continue to construct, operate and maintain its transmission and distribution facilities underground. For the purposes of this subsection, "underground" shall include a partial underground system, e.g. streamlining. Amplifiers and other equipment in grantee's transmission and distribution lines may be placed in appropriate housings upon the surface of the ground. The city shall not in any manner be responsible for any costs or liabilities incurred by grantee in placing grantee's facilities underground or obtaining any easements therefor.
- C. In those areas of the city where grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service and in the event that the facilities of both such public utilities subsequently are placed underground at such public utilities' cost, then the grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at grantee's cost. Certain of grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures.

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

- D. In the event of a single franchisee or multiple franchisees desiring to serve new residential developments in which the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements:
1. The developer shall be responsible for contacting and surveying all franchised cable operators to ascertain which operators desire to provide cable television service to that development. The developer may establish a reasonable deadline to receive cable operator responses. The final map shall indicate the cable operators that have agreed to serve the development;
  2. If one or two cable operators wish to provide service, they shall be accommodated in the joint utilities trench on a nondiscriminatory basis;
  3. Cost of trenching, installing conduit and aerial lines and obtaining easements shall be the responsibility of the property owner;
  4. The developer shall provide at least ten (10) working days' notice of the date that utility trenches will be open to the cable operators that have agreed to serve the development. When the trenches are open, cable operators shall have two working days to begin the installation of their cables and five working days after beginning installation to complete installation;
  5. The final development map shall not be approved until the developer submits evidence that:
    - a. It has notified each grantee that underground utility trenches are to open as of an estimated date and that each grantee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and
    - b. It has received a written notification from each grantee that the grantee intends to install its facilities during the open trench period on the specified terms and conditions or such other terms and conditions as are mutually acceptable to the developer and grantee or has received no reply from a grantee within ten (10) days after its notification to such grantee, in which case the grantee will be deemed to have waived its opportunity to install its facilities during the open trench period;
  6. Sharing the joint utilities trench shall be subject to compliance with Public Utilities Commission and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables. With the concurrence of the developer, the affected utilities and the cable operators, alternative installation procedures, such as use of deeper trenches, may be utilized, subject to applicable law;
  7. If a developer has complied with the terms of this chapter, then any cable operator wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs;
  8. In the event that more than one franchise is awarded, the city reserves the right to limit the number of drop cables and/or pedestals per residence;
  9. The city reserves the right to grant an encroachment permit to a cable franchise applicant to install conduit and/or cable in anticipation of the granting of a franchise. Such installations shall be at the applicant's risk, with no recourse against the city in the event the pending franchise application is not granted. The city may require an applicant to provide a separate trench for its conduit and/or cable, at the applicant's cost. The construction of such a separate trench, if provided, shall be coordinated with and subject to the developer's overall construction schedule.

(Ord. 439 § 2 (1.19), 1996)

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

#### **5.16.200 - Service connections.**

- A. The grantee shall extend cable service to any premises located in the service area served by grantee's energized distribution cable which requires only the connection of a standard drop or tap to make such service available, including those premises serviced by underground utilities, at a standard rate if the owner or occupant of the premises requests such service.
- B. If the service connection requires no more than a two hundred fifty (250) feet aerial drop line, the grantee shall provide connection to its service at no charge for the initial two hundred fifty (250) feet, other than the grantee's standard installation fee. The grantee may charge any new subscriber for the grantee's actual cost of all labor, equipment and materials for:
  - 1. That portion of any new aerial service connection in excess of two hundred fifty (250) feet;
  - 2. The length of any new service connection installed underground; and
  - 3. The entire length of any new service connection to remote or relatively inaccessible subscribers.

Prior to installing any service connection for which the grantee will charge a potential subscriber on a time and materials basis, the grantee must present the prospective subscriber with a written statement of its estimated costs for the service connection.

(Ord. 439 § 2 (1.20), 1996)

#### **5.16.210 - Line extensions.**

The grantee shall be required to extend energized trunk cable from any existing terminus of the cable system to any area within the franchise area having a density of at least ten (10) existing and completed dwelling units within any one-quarter linear mile, provided that the dwelling unit nearest to the existing terminus of the cable system in such one-quarter linear mile is within one-half mile of the existing terminus of the cable system. Within thirty (30) days after grantee has confirmed the existence of the density provided above, grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required for the extension of such trunk cable, including any utility joint use agreements and any permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the cable system. Within thirty (30) days following completion of such line extension construction, the grantee shall proceed to render service provided, however, that any such subscriber requesting service from the extension of the energized trunk cable shall be subject to the provisions of [Section 5.16.200](#) of this chapter.

(Ord. 439 § 2 (1.21), 1996)

#### **5.16.220 - Technical standards.**

The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws ordinances, construction standards, governmental requirements, FCC technical standards and any detailed standards set forth in its franchise agreement. In addition, the grantee shall provide to the grantor, upon request, a written report of the results of the grantee's periodic proof of performance test conducted pursuant to FCC and franchise standards and guidelines. Failure to maintain specified technical standards shall constitute a material breach of the franchise.

(Ord. 439 § 2 (1.22), 1996)

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

#### **5.16.230 - Service to public facilities.**

With the city's reasonable cooperation, grantee shall, without charge to grantor, within one hundred eighty (180) days of the effective date of any franchise hereunder, fully wire with one outlet and provide all legally and contractually allowable subscribers services of its system to all public and nonprofit private schools, city police and fire stations, city recreation centers, library, City Hall and such other buildings owned or controlled by the city, provided that such buildings shall be located within the franchise territory. Grantee shall have no obligation to provide such service to buildings owned or controlled by the city if the primary purpose for such buildings is to house equipment, store records or provide residential housing.

(Ord. 439 § 2 (1.23), 1996)

#### **5.16.240 - Hold harmless.**

- A. Grantee shall indemnify, defend and hold grantor, its officers, agents and employees harmless from any liability, claims, damages, costs or expenses, including reasonable attorney's fees, arising from injury to persons or damages to property to the extent caused by any conduct undertaken by the grantee, its officers, agents or employees, by reason of the franchise; grantee shall at its sole cost and expense, upon demand of grantor, appear in and defend any and all suits, actions or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting grantor, its officers, agents or employees and arising out of or pertaining to the granting of the franchise to the grantee and/or any conduct of the grantee, its agents or employees which is within the scope of this indemnity.

(Ord. 439 § 2 (1.24), 1996)

#### **5.16.250 - Insurance.**

- A. On or before commencement of franchise operations, the grantee shall obtain policies of liability, workers' compensation and property insurance from companies authorized to transact business in California by the Insurance Commissioner of California.
- B. The policy of liability insurance shall:
1. Be issued to grantee and name grantor, its officers, agents and employees as additional insureds;
  2. Indemnify for all liability for personal and bodily injury, death and damage to property arising from activities conducted and premises used pursuant to this chapter by providing coverage therefor, including but not limited to, coverage for:
    - a. Negligent acts or omissions of grantee and its agents, servant and employees, committed in the conduct of franchise operations; and/or
    - b. Use of motor vehicles;
  3. Provide a combined single limit for comprehensive general liability and comprehensive automobile liability insurance in the amount provided for in the franchise agreement. Such insurance policy shall be subject to the review and approval of grantor's legal counsel; and
  4. Be noncancellable without thirty (30) days prior written notice thereof directed to grantor.
- C. The policy of workers' compensation insurance shall:
1. Have been previously approved as to substance and form by the California Insurance Commissioner;

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

2. Cover all employees of grantee who in the course and scope of their employment are to conduct the franchise operations;
  3. Provide for every benefit and payment presently or hereinafter conferred by [Division 4](#) of the Labor Code of the state upon an injured employee, including vocational rehabilitation and death benefits;
  4. Waive all rights of subrogation against the grantor, its officers, officials, employees and volunteers for losses paid under the terms of the policy which arises from work performed by the named insured for the grantor.
- D. The policy of property insurance shall provide fire insurance with extended coverage on the franchise property used by grantee in the conduct of franchise operations in an amount adequate to enable grantee to resume franchise operations following the occurrence of any risk covered by this insurance.
- E. Grantee shall file with grantor prior to commencement of franchise operations the required endorsements and either certified copies of these insurance policies or a certificate of insurance for each of the required policies executed by the company issuing the policy or by a broker authorized to issue such a certificate, certifying that the policy is in force and providing the following information with respect to the policy:
1. The policy number;
  2. The date upon which the policy will become effective and the date upon which it will expire;
  3. The names of the named insureds and any additional insured required by this chapter or the franchise agreement;
  4. The subject of the insurance;
  5. The type of coverage provided by the insurance; and
  6. Amount or limit of coverage provided by the insurance.
- F. Conduct of franchise operations shall not commence until grantee has complied with aforementioned provisions of this section.
- G. In the event grantee fails to maintain any of the above-described policies in full force and effect, grantor shall, upon forty-eight (48) hours notice to grantee, have the right to procure the required insurance and recover the cost thereof from grantee. Grantor shall also have the right, upon forty-eight (48) hours notice to grantee, to suspend the franchise during any period that grantee fails to maintain the policies in full force and effect.
- H. No more than once during any three-year period, grantor shall have the right to order grantee to increase the amounts of the insurance coverage provided herein. Such order may be made by grantor after complying with the hearing procedure provided for in [Section 5.16.340](#) of this chapter. Increases in insurance coverage shall be based upon current prudent business practices of like enterprises involving the same or similar risks.

(Ord. 439 § 2 (1.25), 1996)

#### **5.16.260 - Performance bond.**

No later than the effective date of any franchise granted hereunder, the grantee shall establish and provide to the city a corporate surety bond (the "surety bond") in a form reasonably acceptable to the city and its counsel in the sum of ten thousand dollars (\$10,000.00) as security for the faithful performance by the grantee of specified provisions of the franchise agreement. The surety bond shall remain at this level throughout the term of the franchise.



## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

(Ord. 439 § 2 (1.26), 1996)

#### **5.16.270 - Records required—Grantor's right to inspect.**

- A. Grantee shall at all times maintain:
1. A record of all complaints received and interruptions or degradation of service experienced for the preceding two years, provided that such complaints result in or require a service call;
  2. A full and complete set of plans, records and "as built" maps showing the location of the cable television system installed or in use in the city, exclusive of subscriber service drops and equipment provided in subscriber's homes. The plans, records and maps are trade secrets of grantee and, as such, are exempt from disclosure to members of the public under the Public Records Act (Government Code Section 6250 et. seq), including Section 6254(n). Grantee agrees to assist grantor in demonstrating that the plans, records and maps are exempt under express provisions of the Public Records Act or that on the facts of the particular case, the public interest served by not making the plans, records or maps public clearly outweighs the public interest served by disclosure of the plans, maps or records. Grantor agrees to provide grantee with prompt notice of any request grantor receives for public records that would include the plans, records or maps;
  3. If requested by grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the grantor within thirty (30) days following the end of each month in a form reasonably acceptable to the grantor.
- B. The grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the city's rights under this chapter or the grantee's franchise agreement. Grantee shall have no obligation to provide information, records or documents which contain trade secrets of grantee or which are otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor.
- C. Upon reasonable notice and during normal business hours, grantee shall permit examination by any duly authorized representative of the grantor, of all franchise property and facilities, together with any appurtenance property and facilities of grantee situated within or without the city and all records relating to the franchise, provided they reasonably relate to the scope of the grantor's rights under this chapter or the franchise agreement.

(Ord. 439 § 2 (1.27), 1996)

#### **5.16.280 - Annual reports.**

Within ninety (90) days after the end of the calendar year, at the request of grantor in writing by December 31st of the calendar year, grantee shall submit a written annual report to grantor with respect to the preceding calendar year in a form approved by grantor, including, but not limited to, the following information:

- A. A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system including, but not limited to, services begun or discontinued during the reporting year;
- B. A list of grantee's officers, members of its board of directors and other principals of grantee;
- C. A list of stockholders or other equity investors holding five percent or more of the voting interest in grantee;

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

- D. An indications of any residences in grantee's service area where service is not available and subject to applicable line extension policies, a schedule for providing service;
- E. Information as to the number of homes passed, subscribers, additional television outlets and penetration of basic and pay service in the service area;
- F. Any other information which the grantor shall reasonably request; and
- G. Notwithstanding any of the foregoing, grantee shall have no obligation to include information in its annual report to grantor which is a trade secret of grantee or is otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor. The burden of proof, however, shall be on grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of grantor.

(Ord. 439 § 2 (1.28), 1996)

#### **5.16.290 - Copies of federal and state communications.**

- A. Grantee shall submit to grantor copies of all pleadings, applications and reports submitted by grantee to any federal, state or local court, agency or governmental body as well as copies of all decisions, correspondence and actions by any such federal, state or local court, regulatory agency or other governmental body which are nonroutine in nature and which will materially affect its cable television operations within the franchise area. Grantee shall submit such documents to grantor simultaneously with its submission to such court, agency and/or body; or within five days after its receipt from such court, agency and/or body. Information otherwise confidential by law and so designated by grantee, which is submitted to grantor, shall be retained in confidence by grantor and its authorized agents and shall not be made available for public inspection.
- B. Notwithstanding the foregoing, grantee shall have no obligation to provide copies of documents to grantor which contain trade secrets of grantee or which are otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor. To the extent possible, grantee will provide grantor with summaries of any required documents or copies thereof with trade secrets and confidential and proprietary matters deleted therefrom. The burden of proof shall be on grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of grantor.

(Ord. 439 § 2 (1.29), 1996)

#### **5.16.300 - Public reports.**

If grantee is publicly held, a copy of each of grantee's annual and other periodic reports and those of its parent, shall be submitted to grantor within forty-five (45) days of its issuance.

(Ord. 439 § 2 (1.30), 1996)

#### **5.16.310 - Complaint report and opinion survey.**

- A. The grantee shall furnish to the grantor the results of any opinion survey conducted by the grantee which identifies satisfaction or dissatisfaction among subscribers within the city with the grantee's cable service. The results of such survey shall be furnished to the grantor within thirty (30) days following completion of the survey.
- B. Upon request of the grantor, but not more than once every three years, the grantee shall conduct a subscriber satisfaction survey pertaining to quality of service, which may be transmitted to

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

subscribers in subscriber statements for cable service. The form and content of such survey shall be reasonably acceptable to the grantor. The cost of such survey shall be borne by the grantee.

(Ord. 439 § 2 (1.31), 1996)

#### **5.16.320 - Privacy report.**

Upon grantor's request, but no more than annually, grantee shall submit to grantor a report indicating the degree of compliance with the privacy provisions contained in [Section 5.16.450](#) of this chapter and all steps taken to assure that the privacy rights of individuals have been protected.

(Ord. 439 § 2 (1.32), 1996)

#### **5.16.330 - Reports—General.**

- A. All reports required under this chapter, except those which the grantee has agreed to keep confidential, shall be available for public inspection in the grantor's offices during normal business hours.
- B. All reports and records required under this chapter shall be furnished at the sole expense of grantee, except as otherwise provided in this chapter or the franchise agreement.
- C. The wilful refusal, failure or neglect of grantee to file any of the reports required as and when due under this chapter, may be deemed a material breach of the franchise agreement if such reports are not provided to grantor within thirty (30) days after written request thereof and may subject the grantee to all remedies, legal or equitable, which are available to grantor under the franchise or otherwise.
- D. Any materially false or misleading statement or representation made knowingly and willfully by the grantee in any report required under this chapter or under the franchise agreement may be deemed a material breach of the franchise and may subject grantee to all remedies, legal or equitable, which are available to grantor under the franchise or otherwise.

(Ord. 439 § 2 (1.33), 1996)

#### **5.16.340 - Review of system performance.**

- A. Every fifth year throughout the term of the franchise, if requested by the grantor, grantor and grantee shall meet publicly to review system performance and quality of service.
- B. The various reports required pursuant to this chapter, results of technical performance tests, the record of subscriber complaints and grantee's response to complaints and the information acquired in any subscriber surveys, shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing and these shall be considered. Within thirty (30) days after conclusion of a system performance review meeting, grantor may issue findings with respect to the cable system's franchise compliance and quality of service.
- C. If grantor determines that grantee is not in compliance with the requirements of this chapter or the grantee's franchise, grantor may direct grantee to correct the areas of noncompliance within a reasonable period of time. Failure of grantee, after due notice, to correct the areas of noncompliance within the period specified therefor or to commence compliance within such period and diligently achieve compliance thereafter, shall be considered a material breach of the franchise and grantor may exercise any remedy within the scope of this chapter and the franchise agreement considered appropriate.

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

(Ord. 439 § 2 (1.34), 1996)

#### **5.16.350 - Special review of system performance.**

When there have been complaints made or where there exists other evidence which, in the judgment of the grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the grantee is not in compliance with the requirements of this chapter or its franchise, the grantor shall have the right to compel the grantee to test, analyze and report on the performance of the system in order to assure compliance with this chapter and the franchise agreement. Grantor may not compel grantee to provide such tests or reports unless and until grantor has provided grantee with at least thirty (30) days' notice of its intention to exercise its rights under this section and has provided grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report thereof shall be delivered to the grantor no later than thirty (30) days after the grantor notifies the grantee that it is exercising such right and shall be made at grantee's sole cost. Such report shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used and procedures employed in the testing; the results of such tests; and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

(Ord. 439 § 2 (1.35), 1996)

#### **5.16.360 - Remedies for franchise violations.**

If a grantee fails to perform in a timely manner any obligation required by this chapter or a franchise granted hereunder, following notice from the grantor and, opportunity to be heard by the council and an opportunity to cure such nonperformance in accordance with the provisions of [Section 5.16.380](#) of this chapter, grantor may at its option and in its sole discretion:

- A. Cure the violation and recover the actual costs thereof from the surety bond established herein if such violation is not cured within thirty (30) days after prior written notice to the grantee and an opportunity for grantee to be heard, of grantor's intention to cure and assess the surety bond;
- B. For violations of consumer service standards of this chapter or the franchise agreement which have materially degraded the quality of service, grantor may order and direct grantee to issue rebates or credits to subscribers, in an amount to be determined by grantor to be reasonably related to the nature of the degradation in service and measured by the period of the degradation, to provide monetary relief substantially equal to the reduced quality of service resulting from grantee's failure to perform.

(Ord. 439 § 2 (1.36), 1996)

#### **5.16.370 - Grantor's power to revoke.**

Grantor reserves the right to revoke any franchise granted pursuant to this chapter and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by grantee and material breach under the franchise grant:

- A. If grantee shall default in the performance of its material obligations under this chapter or the franchise agreement and shall continue such default after receipt of due notice and a reasonable opportunity to cure the default;
- B. If grantee shall fail to provide or maintain in full force and effect the insurance coverage or surety bond as required herein;

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

- C. If grantee shall violate any order or ruling of any regulatory body having jurisdiction over the grantee relative to the grantee's franchise, unless such order or ruling is being contested by grantee by appropriate proceedings conducted in good faith;
- D. If grantee attempts to unlawfully evade any provision of this chapter or practices any fraud or deceit upon grantor;
- E. If grantee persistently fails to remedy defaults for which lesser penalties have previously been imposed;
- F. If grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged as bankrupt;

The termination and forfeiture of the grantee's franchise shall in no way affect any right of grantor to pursue any remedy under the franchises or any provision of law.

(Ord. 439 § 2 (1.37), 1996)

#### **5.16.380 - Procedure for remedying franchise violations.**

Prior to imposing any remedy or other sanction against grantee specified in this chapter, grantor shall give grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

- A. Grantor shall first notify grantee of the violation in writing by personal delivery or registered or certified mail and demand correction within reasonable time, which shall not be less than five days in the case of failure of the grantee to pay any sum or other amount due the grantor under this chapter or the grantee's franchise and thirty (30) days in all other cases. If grantee fails to correct the violation within the time prescribed or if grantee fails to commence correction of the violation within the time prescribed and diligently remedy such violation thereafter, the grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the council. The notice shall specify the violations alleged to have occurred.
- B. At the public hearing, the council shall hear and consider all relevant evidence and thereafter render findings and its decision.
- C. In the event the council finds that grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from grantor and is diligently proceeding to fully remedy such violation or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.
- D. In the event the council finds that the alleged violations exist and that grantee has not corrected the same in a satisfactory manner or has not diligently commenced corrections of such violation after notice thereof from grantor and is not diligently proceeding to fully remedy such violation, the council may impose one or more of the remedies specified herein as it, in its discretion, deems appropriate under the circumstance.

(Ord. 439 § 2 (1.38), 1996)

#### **5.16.390 - Force majeure—Grantee's inability to perform.**

- A. In the event grantee's performance of any of the terms, conditions or obligations required by this chapter or a franchise granted hereunder is prevented by a cause or event not within grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed by [Section 5.16.360\(B\)](#) of this chapter. Causes or events not within the control of grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies and natural disasters such as floods, earthquakes, landslides and fires but shall not include financial inability of

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

the grantee to perform or failure of the grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts of omissions of grantee or the failure of the grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

- B. At the expiration of the term for which the franchise is granted or upon its revocation or earlier expiration, as provided for herein, in any such case without renewal, extension or transfer, the grantor shall have the right to require grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the city within a reasonable period of time, which shall not be less than one hundred eighty (180) days.
- C. Notwithstanding anything to the contrary set forth in this chapter, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee.

(Ord. 439 § 2 (1.39), 1996)

#### **5.16.400 - Abandonment or removal of franchise property.**

- A. In the event that use of any franchise property or a portion thereof is discontinued for a continuous period of twelve (12) months, grantee shall be deemed to have abandoned that franchise property. Any part of the cable system that is intended for use only when needed because it is parallel or redundant to other parts of the system, shall not be deemed to have been abandoned because of its lack of use.
- B. Grantor, upon such terms as grantor may impose, may give grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this chapter, the grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. Grantor shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after such removal. The liability, indemnity and insurance provisions of this chapter and the surety bond provided herein shall continue in full force and effect during the period of removal and until full compliance by grantee with the terms and conditions of this section.
- C. Upon abandonment of any franchise property in place, the grantee, if required by the grantor, shall submit to the grantor any instrument, satisfactory in form to the grantor, transferring to the grantor ownership of the franchise property abandoned.
- D. At the expiration of the term for which the franchise is granted or upon its revocation or earlier expiration, as provided for herein, in any such case without renewal, extension or transfer, the grantor shall have the right to require grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the city within a reasonable period of time, which shall not be less than one hundred eighty (180) days.
- E. Notwithstanding anything to the contrary set forth in this chapter, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee.



## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

(Ord. 439 § 2 (1.40), 1996)

#### **5.16.410 - Restoration by grantor—Reimbursement of costs.**

In the event of a failure by grantee to complete any work required herein or by any other law or ordinance and if such work is not completed within thirty (30) days after receipt of written notice thereof from grantor or, if more than thirty (30) days are reasonably required therefor, if grantee does not commence such work within such thirty (30) day period and diligently complete the work thereafter (except in cases of emergency constituting a threat to public health, safety or welfare), grantor may cause such work to be done and grantee shall reimburse grantor for the costs thereof within thirty (30) days after receipt of an itemized list of such costs or grantor may recover such costs through the surety bond provided by grantee.

(Ord. 439 § 2 (1.41), 1996)

#### **5.16.420 - Extended operation and continuation of services.**

Upon either expiration or revocation of the franchise, the grantor shall have discretion to permit grantee to continue to operate the cable television system for an extended period of time not to exceed twelve (12) months from the date of such expiration or revocation, unless extended by resolution of grantor. Grantee shall, as trustee for its successor-in-interest, continue to operate the system under the terms and conditions of this chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. It shall be the right of all subscribers to continue to receive all available services provided their financial and other obligations to grantee are honored. The grantee shall use reasonable efforts to provide continuous, uninterrupted service to its subscribers, including operation of the system during transitional periods following franchise expiration or termination.

(Ord. 439 § 2 (1.42), 1996)

#### **5.16.430 - Receivership and foreclosure.**

- A. A franchise granted hereunder shall, at the option of grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers or trustee or trustees, to take over and conduct the business of grantee, whether in receivership or reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of such one hundred twenty (120) days or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto and the receivership or trustees within such one hundred twenty (120) days shall have remedied all the faults under the franchise or provided a plan for the remedy of such faults which is satisfactory to the grantor; and (2) such receivers or trustees shall, within such one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise granted.
- B. In the case of a foreclosure or other judicial sale of the franchise property or any material part thereof, grantor may serve notice of termination upon grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (1) grantor shall have approved the transfer of the franchise, as and in the manner that this chapter provides; and (2) such successful bidder shall have covenanted and agreed with grantor to assume and be bound by all terms and conditions of the franchise.



## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

(Ord. 439 § 2 (1.43), 1996)

#### **5.16.440 - Rights reserved to grantor.**

- A. In addition to any rights specifically reserved to the grantor by this chapter, the grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise and the grantee by accepting a franchise hereunder agrees to be bound thereby and to comply with any action or requirement of the grantor in its exercise of any such right or power.
- B. The grantor shall have the right to waive any provision of the franchise, except those required by federal or state regulation, if the grantor determines: (1) that it is in the public interest to do so; and (2) that the enforcement of such provision will impose an undue hardship on the grantee or the subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the grantor. Waiver of any provision in one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the franchise unless the statement so relies.

(Ord. 439 § 2 (1.44), 1996)

#### **5.16.450 - Rights of individuals.**

- A. Grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders, relating to nondiscrimination, including without limitation, Section 51 of the California Civil Code which is incorporated in this section by reference.
- B. Grantee shall adhere to the applicable equal employment opportunity requirements of the FCC, state and local regulations, as now written or as amended from time to time.
- C. Neither grantee, nor any person, agency or entity shall, without the subscriber's consent, tap or arrange for the tapping of any cable, line or signal input device or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participating or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.
- D. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.
- E. No cable line, wire, amplifier, converter or other piece of equipment owned by grantee shall be installed by grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed.
- F. The grantee or any of its agents or employees, shall not sell or otherwise make available to any party for any purpose other than the operation or transfer of the cable system without consent of the subscriber pursuant to state and federal privacy laws:
  - 1. Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request in writing to be removed from such list; and

## Title 5 - BUSINESS LICENSES AND REGULATIONS

### Chapter 5.16 - CABLE TELEVISION SYSTEM

2. Any list which identifies the viewing habits of individual subscribers, without the prior written consent of such subscribers. This does not prohibit the grantee from providing composite ratings of subscriber viewing to any party.

(Ord. 439 § 2 (1.45), 1996)